ABDUL LATIF PUTEH & ORS v. PENTADBIR TANAH JAJAHAN PASIR MAS & ANOR

COURT OF APPEAL, PUTRAJAYA
MOHAMAD ZABIDIN MOHD DIAH JCA
S NANTHA BALAN JCA
DARRYL GOON SIEW CHYE JCA
[CIVIL APPEAL NO: D-01(IM)(NCvC)-261-05-2021]
15 JUNE 2022

Abstract – *The claim by the appellants, allegedly the participants in what was known as Kawasan Rancangan FELCRA Bukit Tandak since early 1980, without any legitimate legal basis disclosed in their pleadings to claim ownership or rights in the rubber trees planted on the land, neither in law nor in equity, were obviously unsustainable. The land was never gazetted and/or brought into the ambit of the Land (Group Settlement Areas) Act 1960 and neither did the appellants have any title or right to or over the land on which the rubber trees were planted; they remained unalienated State land.*

LAND LAW: *Ownership – Claim for – Right over interest in rubber trees – Whether rubber trees comprised part of land – Whether land alienated to claimants – Whether land gazetted and/or brought within Land (Group Settlement Areas) Act 1960 – Whether claimants entitled to compensation when rubber trees felled – Whether causes of action predicated upon recognised legal or equitable right in or to rubber trees – Whether trees may be classified as 'chattels' – Whether claimants entitled to compensation*

TORT: *Damages – Liability – Right over interest in rubber trees – Whether land alienated to claimants – Whether land gazetted and/or brought within Land (Group Settlement Areas) Act 1960 – Whether rubber trees comprised part of land – Whether claimants entitled to compensation when rubber trees felled – Whether action could lie under negligence and conspiracy to injure – Whether causes of action predicated upon recognised legal or equitable right in or to rubber trees*

The appellants claimed to be participants in what was known as Kawasan Rancangan FELCRA Bukit Tandak since early 1980, wherein each of the appellants were to be allocated six acres of land. Sometime in 2014, the second respondent, the Kelantan State Government, reduced the area to be allocated to three acres per person. As a result, the appellants commenced a legal action against the first and second respondents ('Suit 1'), but the suit was dismissed by the High Court on the basis that the appellants had no right to the six acres of land claimed. Their appeal to the Court of Appeal was also dismissed and leave to appeal was refused by the Federal Court. During the pendency of Suit 1, the first respondent called for tenders for the felling of rubber trees planted by the appellants on the land, allegedly, without the

appellants' knowledge. The appellants subsequently filed a second suit ('Suit 14') which was later struck out. In the current suit, the appellants claimed that they had, over the years, planted palm oil and rubber trees on the land allocated by FELCRA and this was to the knowledge and without any protest from the respondents. Many of the appellants had also been given, and alienated to them, separate parcels of land in the vicinity for them to erect their residences. It was in these circumstances that the appellants claimed that the respondents may not have the rubber trees planted by the appellants felled and, if felled, the appellants would be entitled to compensation. The principal subject matter of the reliefs sought centred upon what was not merely some form of usufructuary right over the rubber trees planted, but a right over an interest in the actual rubber trees themselves. The High Court was of the view that, as long as the land was not alienated to the appellants, the rubber trees planted on the land were part of the land and they did not, and could not, belong to the appellants. The second respondent was therefore at liberty to have the rubber trees felled as they wished. The High Court concluded that the appellants' action against the respondents was obviously unsustainable. Hence, this appeal.

Held (dismissing appeal)
Per Darryl Goon Siew Chye JCA delivering the judgment of the court:

(1) While the causes of action pleaded against the respondents were in the tort of negligence and conspiracy, including an allegation of *mala fides*, these causes of action related only to the rubber trees claimed and thus, the causes of action must necessarily be predicated upon some recognised legal or equitable right in or to the rubber trees. It was not pleaded or asserted that (i) the appellants had any title or right to or over the land on which the rubber trees were planted; they remained unalienated State land; (ii) there existed any contract between any of the appellants and either or both the respondents; (iii) there existed any contract relating to the use or occupation of the said land between FELCRA and either respondents; (iv) there was any form of representation made in respect of the appellants' occupation of the land in question or the planting of the rubber trees on them giving rise or which could possibly give rise to a claim of some species of equitable right or estoppel, whether in the form of a proprietary estoppel or otherwise. The land in question was never gazetted and/or brought into the ambit of the Land (Group Settlement Areas) Act 1960. (paras 30-34)

(2) The mere occupation or enjoyment of the unalienated land by the appellants would not, *per se*, dispossess the second respondent's interest in it or anything that falls within the definition of land under the National Land Code ('NLC'). Even if planted by the appellants or their predecessors, the rubber trees so planted would clearly come within the definition of 'land' under the NLC. It was untenable that the trees growing on land *in situ*, may be classified as 'chattels'. (paras 39-41)

(3) Any title or interest in the rubber plants that existed before they were planted were lost and became part of the land when they were planted on land not belonging to the appellants. Therefore, the appellants or their predecessors in title, no longer had any rights in the rubber trees once they were planted into the land. It also followed that the appellants would have no interest or right to the rubber trees if and when they were subsequently felled and turned into chattels. Without being able in law to retain or obtain title to the rubber trees because the land did not belong to the appellants, the negligence pleaded of the respondents simply could not lie. It would also not be an unlawful act for the second respondent to have the rubber trees felled. There was no conspiracy to injure pleaded in the form that there was any predominant intention on the part of the respondents, or either of them, to injure the appellants. (paras 45-47)

(4) The appellants had enjoyed the use of land they did not and do not own. They had planted on the land and extracted the benefits from the rubber trees planted for some 30 years, without having to incur any payment for the use of the land. They were well aware that no contract was signed and the land was never alienated to them. There was also no promise or representation made by either respondent to any of the appellants that they would have the land alienated to them. Any right that the appellants may have claimed in the land had also been extinguished by the decision of the court in Suit 1. Without any legitimate legal basis disclosed in the pleadings to the appellants' claim to ownership or rights in the rubber trees planted, neither in law nor in equity, the appellants' claims against the respondents were obviously unsustainable. (paras 51 & 52)

Case(s) referred to:

Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC ***(foll)***

Devi v. Francis [1968] 1 LNS 34 HC ***(refd)***

Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd [2015] 2 CLJ 453 FC ***(refd)***

Mok Deng Chee v. Yap See Hoi & Ors [1981] CLJ 124B; [1981] CLJ (Rep) 69 FC ***(refd)***

Reynolds v. Ashby & Son [1904] AC 466 ***(refd)***

United Malayan Banking Corp Bhd v. Pemungut Hasil Tanah, Kota Tinggi & Another Case [1984] 2 CLJ 146; [1984] 1 CLJ (Rep) 51 ***(refd)***

Wiggins Teape (M) Sdn Bhd v. Bahagia Trading Sdn Bhd; The East Asiatic Co Ltd & Ors As Objectors [1979] 1 LNS 125 HC ***(refd)***

Legislation referred to:

Civil Law Act 1956, s. 6

Land (Group Settlement Areas) Act 1960, s. 4

National Land Code, ss. 5, 341

Rules of Court 2012, O. 18 r. 19(1)(a), (c), (d)

Other source(s) referred to:
R E Megarry and H W R Wade, *The Law of Real Property*, 4th edn, p 712
R M Goode, *Goode and McKendrick on Commercial Law*, 6th edn, p 42

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[Editor's note: For the High Court judgment, please see Abdul Latif Puteh & 347 Yang Lain lwn. Pentadbir Tanah Jajahan Pasir Mas & Yang Lain [2021] 1 LNS 1397 (affirmed).]

Reported by S Barathi

JUDGMENT

Darryl Goon Siew Chye JCA:

[1] This was an appeal against the decision of the High Court in striking out the appellants' writ of summons and statement of claim and, consequently, their action against the respondents upon the latter's application.

[2] The respondents were the first and second defendants in the action, namely the Pentadbir Tanah Jajahan Pasir Mas and Kerajaan Negeri Kelantan respectively, and their application to strike out the appellants' action against them, which was in encl. 29, was made invoking O. 18 r. 19(1)(a), (c) and/or (d) of the Rules of Court 2012 and the inherent jurisdiction of the court.

[3] After considering the submissions of counsel for the parties, both written and oral, the appellants' appeal was dismissed with nominal costs.

[4] It should be mentioned that the two other appeals were heard at the same time as the appeal at hand. The other two appeals were also appeals brought by the appellants against the decision of the High Court in striking out their action against the other defendants. These other appeals were also dismissed with costs.

Background

[5] There were 348 appellants in all and of whom 161 had brought this action in their personal capacity while 187 in representative capacities. Thus, the capacity and status of the appellants, as plaintiffs, were not all the same. However, for the avoidance of confusion, the term appellants shall in this judgment be used collectively to refer to all the appellants unless their respective status are addressed and expressly distinguished.

[6] The appellants claim to be participants in what is known as Tanah Rancangan FELCRA (the Federal Land Consolidation and Rehabilitation Authority) Bukit Tandak since early 1980. This was apparently pursuant to

a letter of approval from the first respondent to FELCRA of 24 June 1979. Their so-called participation was said to be with the approval of the second respondent. Subsequently an area referred to as Lot 1404, Mukim Rantau Panjang, Daerah Rantau Panjang, Jajahan Pasir Mas, Negeri Kelantan in Kampung Bukit Tandak was identified to be rehabilitated and developed by FELCRA Berhad under the Land (Group Settlement Areas) Act 1960 (Act 530). This area was known as Kawasan Rancangan FELCRA Bukit Tandak ('KRBT').

[7] An agreement was supposed to have been signed between the second respondent and FELCRA Berhad but, although an agreement existed in draft, it was never executed. It was pleaded in the statement of claim that the land in question was also never alienated to the appellants or declared and gazetted under Act 530 and thus, was never brought under Act 530.

[8] In this regard, s. 4 of Act 530 provides as follows:

> 4. Group settlement areas
>
> The State Authority may by notification in the *Gazette* declare any area of State land, whether or not included in a designated area, to be a group settlement area for the purposes of this Act.

[9] Notwithstanding the foregoing, the appellants claimed that they were nevertheless nominated to participate in the KRBT scheme by FELCRA and each of the appellants were to be allocated six acres of land.

[10] Sometime in 2014, the second respondent reduced the area to be allocated to three acres per person. As a result, on 14 April 2015, the appellants commenced legal action against the first and second respondents over this reduction in the size of land to be allocated. The suit brought was Civil Suit No. DA-21NCVC-1-04-2015 ('suit 1'). Suit 1 against the respondents was dismissed by the High Court on the basis that the appellants had no right to the six acres of land claimed. The appellants' appeal to the Court of Appeal was dismissed and leave to appeal was refused by the Federal Court.

[11] During the pendency of suit 1, when it was before the Federal Court, the first respondent called for tenders for the felling of the rubber trees allegedly planted by the appellants on the land in question. It was contended that this was without the appellants' knowledge.

[12] The appellants subsequently filed a second suit, Civil Suit No. DA-21NCvC-14-09-2018 ('suit 14'). Among the defendants to suit 14 were the respondents and also the Director of Land and Mines of Kelantan. Suit 14 was, however, struck out upon the application of the Director of Land and Mines Kelantan. The respondents had also applied to strike out suit 14 but before their application could be decided, suit 14 was discontinued by the appellants.

[13] In the current suit, the third brought by the appellants, the appellants claimed that they had, over the years, planted palm oil and rubber trees on the land allocated by FELCRA and this was to the knowledge and without any protest from the respondents.

[14] It should also be mentioned that many of the appellants had also been given, and alienated to them, separate parcels of land in the vicinity for them to erect their residences.

[15] It was in these circumstances that the appellants claimed that the respondents may not have the rubber trees planted by the appellants felled and if felled, the appellants would be entitled to compensation.

Appellants' Pleaded Case

[16] The relief sought by the appellants were as follows:

(a) Pengistiharan bahawa Plaintif-Plaintif adalah berhak ke atas kesemua pokok-pokok getah di Kawasan KRBT yang seluas 689 Hektar/1702 Ekar;

(b) Pengistiharan bahawa tender yang dikeluarkan oleh Defendan Pertama Kepada Defendan Ketiga, Keempat dan Kelima atau mana-mana pihak ketiga adalah tidak sah dan terbatal;

(c) Penebangan dan penjualan pokok-pokok getah yang dibuat oleh Defendan Ketiga, Keempat dan Kelima adalah merupakan suatu pencerobohan, tidak sah dan melanggar undang-undang; dan

(d) Plaintif-Plaintif berhak untuk melupuskan sendiri pokok-pokok getah tersebut dengan mana-mana cara yang mereka fikirkan sesuai.

Atau secara alternatifnya:

(a) Defendan Pertama dan Kedua membayar balik ganti rugi kos penanaman pokok-pokok getah yang telah dikeluarkan oleh Plaintif-Plaintif;

(b) Defendan Ketiga, Keempat dan Kelima menyerahkan hasil jualan, resit jualan dan invoice jualan pokok-pokok getah tersebut sekiranya pokok-pokok getah tersebut ditebang dan dijual sebelum penamatan kes ini;

Dan

(a) Ganti rugi Am yang akan ditaksirkan;

(b) Ganti rugi Aggravated dan Exemplary dibayar oleh Defendan Pertama dan Kedua atas kecuaian mengeluarkan tender kepada pihak ketiga secara tidak sah;

(c) Kos; dan

(d) Apa-apa relif lain yang difikirkan patut, sesuai dan wajar oleh Mahkamah Yang Mulia ini.

[17] Hence, the principal subject matter of the reliefs sought was centred upon what is not merely some form of usufructuary right over the rubber trees planted, but a right over and interest in the actual rubber trees themselves.

[18] Upon this premise was then asserted, and pleaded, allegations of negligence, conspiracy and *mala fides* against all the defendants, including the respondents, in respect of the call for tenders and the subsequent appointment of the third, fourth and fifth defendants to fell the rubber trees allegedly planted by the appellants on the land in question. These then were the pleaded causes of action.

[19] As against the respondents, the particulars provided of the pleaded causes of action were as follows:

> 372. Selanjutnya, Plaintif-Plantif menegaskan bahawa Defendan Pertama dan Kedua adalah secara bersesama dan/atau berasingan telah melakukan konspirasi, niat jahat dan/atau cuai dalam melakukan urusan proses pengeluaran tender bagi penebangan pokok-pokok getah di Kawasan KRBT.
>
> BUTIR-BUTIR KECUAIAN/KONSPIRASI DAN/ATAU NIAT JAHAT DEFENDAN PERTAMA DAN DEFENDAN KEDUA
>
> (a) Gagal untuk memanggil pihak-pihak terlibat berbincang sebelum proses pengeluaran tender dikeluarkan;
>
> (b) Gagal mengambil kira kepentingan Plaintif-Plaintif yang telah membayar kesemua kos-kos tanaman ke atas pokok-pokok getah tersebut sebelum tender dikeluarkan;
>
> (c) Bayaran tender telah gagal dimasukkan ke dalam akaun peserta-peserta sepertimana kebiasaan yang diamalkan oleh FELCRA sebelum ini di kawasan-kawasan lain;
>
> (d) Gagal memaklumkan kepada agensi perlaksanaan bahawa tender tersebut telah dikeluarkan;
>
> (e) Gagal mengambil kira amalan biasa yang memberikan FELCRA kuasa penuh dalam proses mengeluarkan tender;
>
> (f) Mengeluarkan tender secara tertutup dan/atau runding terus yang meragukan;
>
> (g) Mengeluarkan tender di bawah harga pasaran yang sebenar pada masa yang material;
>
> (h) Mengeluarkan tender pada 10/10/2018 sedangkan kes di Mahkamah Persekutuan (Permohonan Sivil No.: 08(f)-423-08/2018(D)) hanya diputuskan pada 27/03/2019;
>
> (i) Melakukan misrepresentation (representasi salah) berkaitan dengan persetujuan FELCRA dalam mengeluarkan tender;

(j) Masih mengeluarkan surat arahan kepada Defendan Ketiga, Keempat dan Kelima untuk meneruskan kerja-kerja penebangan walaupun sedar kes terdahulu (Guaman Sivil No. DA-21NCVC-14-09/2018) masih lagi dalam proses perbicaraan;

(k) Defendan Pertama dan Kedua telah gagal membuat apa-apa tuntutan berkaitan pokok-pokok getah tersebut selama lebih 30 tahun prinsip ekuiti adalah terpakai untuk tindakan mereka; dan

(l) Defendan Pertama dan Kedua memperolehi pengayaan tidak adil/ unjust enrichment melalui pemberian tender kepada Defendan Ketiga, Keempat dan Kelima.

[20] The particulars delivered of the pleaded causes of action were thus primarily directed at acts and omissions pertaining to the felling of the rubber trees in question.

The Respondents' Application To Strike Out

[21] The respondents on the other hand maintained, *inter alia*, that the court in suit 1 had held that the appellants had no rights to the land in question.

[22] As a matter of law, the respondents also contended that the appellants cannot segregate the rubber trees planted on the land in question, from the land itself. The rubber trees are to be regarded as part of land and the land in question are unalienated state land to which the appellants have no right to or interest in.

Decision Of The High Court

[23] The learned High Court Judge, in his judgment, identified the essence of the appellants' claim to be a claim to rights in the rubber trees which they had planted at their own costs and expense, to the knowledge of the respondents, even though the land upon which the rubber trees were planted do not belong to and was not alienated to the appellants or any of them. Put bluntly, the contention was tantamount to an assertion that the State may be the owner of the land in question but not the rubber trees that the appellants had planted on them.

[24] The learned High Court Judge then proceeded to analyse this issue which was central to the appellants' claim. The learned judge observed that since the court had determined in the prior action that the appellants had no interest in the land in question, the issue in this case was whether the appellants can still maintain that they have a right to or interest in the rubber trees they had planted?

[25] To this question, the learned judge referred to s. 5 of the National Land Code 1965 ('NLC'). Section 5, the definition section of the NLC, defines 'land' as follows:

A "land" includes:

(a) that surface of the earth and all substances forming that surface;

(b) the earth below the surface and all substances therein;

(c) all vegetation and other natural products, whether or not requiring
B the periodical application of labour to their production, and whether on or below the surface;

(d) all things attached to the earth or permanently fastened to anything attached to the earth, whether on or below the surface; and

(e) land covered by water;

C

[26] Also referred to by the learned judge was the decision in *Wiggins Teape (M) Sdn Bhd v. Bahagia Trading Sdn Bhd; The East Asiatic Co Ltd & Ors As Objectors* [1979] 1 LNS 125; [1980] 2 MLJ 45, in which Vohrah J stated as follows:

D The only point I have to decide is whether the machine forms part of the land held under the charge by acquiring the character of a fixture. That land comprises fixtures is clear from the definition of "land" in s. 5 of the National Land Code which includes "all things attached to the earth or permanently fastened to anything attached to the earth, whether on or below the surface." That the English law relating to fixtures applies to
E Malaysia is clear from the judgment of Ong J (as he then was) in *The Shell Company of the Federation of Malaya Ltd v. Commissioner of the Federal Capital of Kuala Lumpur* [1964] MLJ 302. This case also quotes with approval a passage of Blackburn J. delivered in *Holland v. Hodgson* LR 7 CP 328 335 as follows:

F Perhaps the true rule is, that articles not otherwise attached to the land than by their own weight are not to be considered as part of the land, unless the circumstances are such as to shew that they were intended to be part of the land, the onus of shewing that they were so intended lying on those who assert that they have ceased to be chattels, and that, on the contrary, an article which is affixed
G to the land even slightly is to be considered as part of the land, unless the circumstances are such as to shew that it was intended all along to continue a chattel, the onus lying on those who contend that it is a chattel.

[27] In the learned judge's view, as long as the land is not land alienated
H to the appellants, the rubber trees planted on the land are part of the land and they do not and cannot belong to the appellants. The second respondent, the Kerajaan Negeri Kelantan, was therefore at liberty to have the rubber trees felled as they wish. The learned judge then concluded that the appellants' action against the respondents was obviously unsustainable citing the often-
I cited decision and test enunciated by the Federal Court in *Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7; [1993] 3 MLJ 36.

The Appellants' Appeal

[28] In the submissions of learned counsel for the appellants before us, it was contended that the issue in the current case, unlike suit 1, was ownership of the rubber trees and not of the land in which the rubber trees were planted. The basis of the ownership in the rubber trees, it was contended and as mentioned, stems from the fact that they were planted by the appellants or their predecessors in title, to the knowledge and without any objections from the respondents.

[29] Learned counsel for the appellants also sought to argue that the rubber trees are not fixtures but are chattels and therefore, somehow, the definition of 'land' under s. 5 of the NLC does not apply.

[30] We are of the view that the learned judge did not err in His Lordship's analysis of the case. While the causes of action pleaded against the respondents were in the tort of negligence and conspiracy, including an allegation of *mala fides*, these causes of action relate only to the rubber trees claimed and thus, the causes of action must necessarily be predicated upon some recognised legal or equitable right in or to the rubber trees.

[31] In this regard, it is necessary to point out that it was not pleaded or asserted that the appellants had any title or right to or over the land on which the rubber trees were planted. They remain unalienated state land.

[32] In addition, it was not pleaded or asserted that there existed any contract between any of the appellants and either or both the respondents. Furthermore, it was not pleaded or asserted that there existed any contract relating to the use or occupation of the said land between FELCRA and either respondent. In fact, it was candidly pleaded that there was no contract executed – though there existed a contract merely in draft.

[33] It was also not pleaded or asserted that there was any form of representation made in respect of the appellants' occupation of the land in question or the planting of the rubber trees on them giving rise, or which could possibly give rise, to a claim of some species of equitable right or estoppel, whether in the form of a proprietary estoppel or otherwise. This is leaving aside the question whether an estoppel may even lie against the second respondent.

[34] As for the facts material to this case, it is significant and has to be noted that the land in question were never gazetted and/or brought into the ambit of Act 530.

[35] Thus ultimately, the question, as the learned judge posed, was whether the appellants had any rights to or in the rubber trees just because they had planted them at their own costs on the state land *albeit* to the knowledge of the respondents and without any protest from them.

[36] It should be borne in mind that s. 6 of the Civil Law Act 1956 makes it clear that no part of the law of England relating to the 'tenure or conveyance or assurance of or succession to any immovable property or **any estate, right or interest therein**' (emphasis added) is introduced into Malaysia or any of the States comprised therein. Instead, our law pertaining to land or immovable property is to be found in the NLC – which is a code in the true sense of the word. As Lord Keith of Kinkel observed in the advice of the Privy Council in *United Malayan Banking Corp Bhd v. Pemungut Hasil Tanah, Kota Tinggi & Another Case* [1984] 2 CLJ 146; [1984] 1 CLJ (Rep) 51; [1984] 2 MLJ 87 (PC) at p. 56 (CLJ); p. 91 (MLJ):

> The National Land Code is a complete and comprehensive code of law governing the tenure of land in Malaysia and the incidents of it, as well as other important matters affecting land there, and there is no room for the importation of any rules of English law in that field except in so far as the Code itself may expressly provide for this.

[37] English land law is therefore not the primary source of our law in respect of land in the country. This is of course to be distinguished from applicable principles of equity which acts *in personam*, and not *in rem* in respect of land itself. Thus, in our books are cases where equitable proprietary estoppel has been applied against individuals to allow for a limited tenure in land based upon the nature of representations made and relied upon (see for example *Devi v. Francis* [1968] 1 LNS 34; [1969] 2 MLJ 169; and *Mok Deng Chee v. Yap See Hoi & Ors* [1981] CLJ 124B; [1981] CLJ (Rep) 69; [1981] 2 MLJ 321).

[38] In this context, we then have s. 5 of the NLC referred to above and also, of some relevance, s. 341 of the NLC which provides as follows:

> **341. Adverse possession not to extinguish titles or interests**
>
> Adverse possession of land for any length of time whatsoever shall not constitute a bar to the bringing of any action for the recovery thereof by the proprietor or any person or body entitled to an interest therein, and accordingly, the Limitation Act 1953, shall in no circumstances operate to extinguish any title to, or interest in, land.

[39] Thus, the mere occupation or enjoyment of the unalienated land in question by the appellants will not *per se*, dispossess the second respondent's interest in it or anything that falls within the definition of land under the NLC.

[40] What then constitutes land under the NLC? This is in turn answered by the definition given in s. 5. In our view, even if planted by the appellants or their predecessors, the rubber trees so planted would clearly come within the definition of 'land' under the NLC.

[41] We find it quite untenable that trees growing on land *in situ*, may be classified as 'chattels' despite the valiant attempt by learned counsel to argue the contrary. Under the common law, chattels or chattels personal (as opposed to chattels real, which relates to immovable property) are divided into tangible movables and intangibles, otherwise known as choses in action (see generally *Goode and McKendrick on Commercial Law*, 6th edn, by R M Goode p. 42 *et seq*).

[42] Rubber trees planted into the ground would fall within the definition of land under the NLC and there is no room for argument, even under the common law, that they may still be regarded as chattels.

[43] While a rubber seed or sapling before it is planted may be regarded as a chattel, once it is planted its legal nature is altered. As is pointed out by the learned authors of *The Law of Real Property*, R E Megarry and H W R Wade, 4th edn p. 712:

> A physical object will usually be either land or a chattel, but its nature may change according to the use made of it. The materials used for building a house are thereby converted from chattels into land, and so automatically pass out of the ownership of the person who owned them as chattels and become the property of the owner of the land to which they are attached; and it makes no difference whether the person who attached them had a right to do so or not.

[44] In *Reynolds v. Ashby & Son* [1904] AC 466 at p. 75, Lord Lindley stated:

> The title to chattels may clearly be lost by being affixed to real property by a person who is not the owner of the chattels. This was pointed out in *Gough v. Wood* (1) and is very old law.

Though in such a case, a claim in conversion of the chattel may well be available. However, the point is, title in a chattel that is vested in a person will be extinguished when it is converted and regarded in law, in our case under the NLC, as land.

[45] There is no suggestion in this case that the rubber trees were originally chattels wrongly removed by either respondent from the appellants and then planted on the land in question. Thus, in this case, any title or interest in the rubber plants that existed before they were planted were lost, and became part of land, when they were planted on land not belonging to the appellants.

[46] Therefore, the appellants or their predecessors in title, no longer had any rights in the rubber trees once they were planted into the land in question. It also follows that the appellants would have no interest or right to the rubber trees if and when they were subsequently felled and turned into chattels. There is no concept of a re-vesting of a prior title to chattel in such a situation. Indeed, no argument or authority to such effect was proffered by learned counsel for the appellants.

[47] Without being able in law to retain or obtain title to the rubber trees because the land in question do not belong to the appellants, the negligence pleaded of the respondents simply cannot lie. Furthermore, it would also not be an unlawful act for the second respondent to have the rubber trees felled. In this regard, and in addition, it is also noted that there was no conspiracy to injure pleaded in the form that there was any predominant intention on the part of the respondents, or either of them, to injure the appellants.

[48] While an element of sympathy may be evoked by the facts presented, the learned judge was nevertheless able to focus on the legal issues which, in the ultimate, was whether the appellants can claim ownership in the rubber trees – but not the land, sans any contractual or equitable basis advanced, save for having planted them at their own expense and to the knowledge of the respondents.

[49] It is also necessary to point out that the appellants' contention, if allowed, can translate into a principle such that if taken to its logical conclusion, can have very substantial consequences to the law applicable to immovable property, inconsistent with established principles.

[50] Unjust enrichment was also contended in this case. In *Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd* [2015] 2 CLJ 453; [2015] 2 MLJ 441, Azahar Mohamed FCJ, and now CJM, speaking on behalf of the Federal Court stated as follows:

> [117] ... The principle underlying the cases of *Banque Financiere de la Cite v. Parc (Battersea) Ltd and Sempra Metals Ltd (formerly Metallgesellschaft Ltd) v. IRC* is that, in the context of the present case, a cause of action in unjust enrichment can give rise to a right to restitution where it can be established that:
>
> (a) the plaintiff must have been enriched;
>
> (b) the enrichment must be gained at the defendant's expense;
>
> (c) that the retention of the benefit by the plaintiff was unjust; and
>
> (d) there must be no defence available to extinguish or reduce the plaintiff's liability to make restitution.
>
> [118] Nearer home, there is now no longer any question that unjust enrichment law is a new developing area of law which is recognised by our courts. That the principle of unjust enrichment is the basis to justify an award of restitutionary relief can be seen in *Sediperak Sdn Bhd v. Baboo Chowdhury* [1999] 5 MLJ 229 and in *Air Express International (M) Sdn Bhd v. MISC Agencies Sdn Bhd* [2012] 4 MLJ 59. Nevertheless, it has to be said that despite the increase in judicial reference to the expression of unjust enrichment to justify an award of restitutionary reliefs, the law of unjust enrichment is still in its formative stage in our jurisdiction (see article entitled '*An Introduction to the Law of Unjust Enrichment*' [2013] 5 MLJ i by Alvin W-L See). In our view, the time has come for this court to recognise

the law of unjust enrichment by which justice is done in a range factual circumstance, and that the restitutionary remedy is at all times so applied to attain justice.

[51] Are the circumstances of this case somehow arguably unjust? This is not to suggest that personal judicial sentiments without the benefit of any legal or equitable underpinning are relevant. The appellants, and in some cases their predecessors, have enjoyed the use of land they did not and do not own. They have planted on the land in question and extracted the benefits from the rubber trees planted for some 30 years, without having to incur any payment for the use of the land. They were well aware that no contract was signed and the land were never alienated to them. There was also no promise or representation made by either respondent to any of the appellants that they would have the land alienated to them. Any right that the appellants may have claimed in the land had also been extinguished by the decision of the court in suit 1. Now the appellants wish to claim ownership in the rubber trees grown on land they do not own. Indeed, many less fortunate individuals have not had the opportunity to benefit from the use, and the fruits, from land which they do not own, without any charge. It is in fact the appellants who have benefited or been enriched.

[52] Without any legitimate legal basis disclosed in the pleadings to the appellants' claim to ownership or rights in the rubber trees planted, neither in law nor in equity, the appellants' claims against the respondents are obviously unsustainable. Upon the principles enunciated by the Federal Court in the decision in *Bandar Builder Sdn Bhd*, the appellants' appeal was dismissed with nominal costs.

[53] My learned brothers Mohamad Zabidin bin Mohd Diah and S Nantha Balan JJCA have each had the advantage of reading this judgment in draft and have expressed their concurrence with it.